

file 31

DCI/ICS 84-3007
6 April 1984

MEMORANDUM FOR: Director of Central Intelligence

FROM: Eloise R. Page
Deputy Director, Intelligence Community StaffSUBJECT: Initiatives to Combat Unauthorized Disclosures
of Classified Intelligence Information

1. On 30 March 1984 I convened a meeting in response to your charge to develop administrative, security and legal initiatives which could be taken to help deal with the problem of unauthorized disclosures. At this meeting, which was attended by the Executive Director, the General Counsel, the Director of Security, the Deputy Director of Legislative Liaison, the Chairman of the Security Committee and senior General Counsel representatives, including the Chairman of SECOM's Unauthorized Disclosures Investigations Subcommittee, the papers at Tab A were presented. After some discussion, it was decided that the following proposals should be submitted for your consideration.

I. INVESTIGATION

Nothing is more necessary at this point than to break the cycle of futility by finding an appropriate leak case, having it thoroughly investigated and having the leaker identified and appropriately disciplined.

A. Presidential Statement

-- Congressional and media focus on certain aspects of NSDD-84 diverted attention away from the problem of intelligence leaks and, if anything, the problem has gotten worse. More recently there has been some Congressional recognition of the seriousness of such leaks and we again need to signal Executive Branch concern.

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DOWNGRADE TO UNCLASSIFIED
WHEN SEPARATED FROM TAB A

*We recommend a forceful Presidential statement to his Cabinet and senior White House officials, decrying the harmful effects of leaks. Expressions of Congressional support from the intelligence oversight committees would help immeasurably.

B. Use of a Special Prosecutor

-- Current investigative timidity may derive from the recognition that there are political costs in pursuing an aggressive investigation of media leaks.

*We recommend Attorney General appointment of a special prosecutor (independent counsel) to pursue sensitive leak investigations. The special prosecutor should have all necessary powers, including the ability to bring witnesses before a grand jury.

-- Use of a special prosecutor in appropriate cases will help assure the public, and particularly the media, that the investigation will be impartial and objective and neither politically motivated nor politically constrained.

C. Creation of a Separate FBI Leak Investigation Unit

-- Although we report a significant number of leaks to Justice each year, very few are investigated because Justice is not sanguine about solving such cases and prefers to use FBI resources on other types of cases.

*We recommend creation of a special unit within the FBI to do nothing but investigate intelligence leaks. The Intelligence Community should support a line-item appropriation to finance this unit.

-- Bureau assistance is necessary because certain key government components have no investigative staffs and in other departments and

agencies responsibility and authority are solely internal, with one agency unable to investigate what happened to its information when disseminated to a second agency.

-- Intelligence Community security organizations and the DCI Security Committee must provide appropriate assistance and work closely with this FBI unit.

II. REGULATION OF GOVERNMENTAL CONTACT WITH THE MEDIA

-- Contact between government officials and the press very often is salutary, contributing to public knowledge and informing public debate. Government officials, however, have no license to jeopardize intelligence sources and methods or mishandle classified information. Nevertheless, newsmen regularly brag that they have daily access to some of our most sensitive intelligence publications.

*We recommend:

- a) Centralizing within each agency the regulation of all press contacts so a single official is aware of all authorized contacts;
- b) Elimination of press building passes giving unsupervised or unrestricted access to government buildings;
- c) Requiring employees to record all press contacts relating to their official positions and duties; and
- d) Establishment of guidelines for backgrounders and indoctrination of employees on press tactics and proper responses.

III. SECURITY EDUCATION

The public generally regards intelligence leaks as interesting, even titilating and perhaps useful in exposing governmental excess but basically harmless. Leakers are seen as vaguely heroic figures akin to whistleblowers, and leaks are viewed as a kind of game in which the government tries to

hide information while the media tries to find the secrets. Until the public understands that compromises of intelligence sources and methods erode our ability to obtain vital intelligence and hurt the national security more than they contribute to public debate, public support for needed security measures will be lukewarm at best.

A. Presidential Commission

*We recommend creation of a Presidential Commission to review intelligence leaks, to examine steps which can be taken to protect intelligence sources and methods from unauthorized disclosure, to review existing investigative and legal constraints and to make recommendations to improve the situation.

-- Intelligence leaks have been a problem in both Democratic and Republican administrations. A nonpartisan blue ribbon panel could help to generate greater public understanding of the problem and support for appropriate remedial steps.

B. Security Briefings

*We recommend a redoubling of efforts to reach policy level officials in the State and Defense Departments, the National Security Council, and on the staff of the intelligence oversight committees. These security briefings should not be in a lecture format in which the official being briefed listens passively to a recitation of rules. Instead, the briefing must focus on the specific audience, citing the actual damage caused by leaks and explaining how, with a modicum of care, intelligence sources and methods could have been protected with minimum impact on the underlying news story or policy issue. There must be practical guidelines for senior officials on how intelligence material must be safeguarded in dealing with the press.

C. Outreach Program

*We recommend an effort to increase public awareness of the fragility of intelligence sources and methods and the national security implications of intelligence leaks. Senior intelligence officials and public affairs officers should take the time to develop this issue in speeches, articles and other programs which will reach important segments of the public.

IV. LEGISLATION

Arguably, unauthorized disclosures of classified information are in violation of the espionage laws but Justice has never successfully prosecuted a leaker under these statutes. In part, this may be because it is necessary to prove that the individual transmitting the national defense information did so with reason to believe it would be used to the injury of the United States or to the advantage of a foreign nation and in part, because of a reluctance to treat leakers as spies.

A. Criminalizing Leaks

*We recommend new legislation (Tab B) criminalizing the willful unauthorized disclosure of classified information by government employees or other persons with authorized access to classified information.

-- Such legislation would be free of the intent requirements in the current espionage laws and would make willful unauthorized disclosure of classified information illegal per se.

B. Injunctive Relief

-- At the appropriate time after passage of legislation criminalizing the unauthorized disclosure of classified information, we might consider seeking legislation (Tab C) providing for injunctive relief in leak cases similar to that available under the Atomic Energy Act.

2. To the extent appropriate, implementation of these recommendations should be discussed with our oversight committees. In this manner, we can capitalize on the growing Congressional concern about damage to intelligence from leaks and can avoid triggering a partisan political response to actions which seek to deal with a very serious and very urgent problem facing the Community.

Eloise R. Page

Attachments: As stated.

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